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LABORERS INTERNATIONAL UNION OF
NORTH AMERICA PACIFIC SOUTHWEST REGION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LABORERS' INTERNATIONAL UNION OF) No.
NORTH AMERICA PACIFIC SOUTHWEST)
REGION) COMPLAINT
) Violation of FOIA, 5 U.S.C. § 552, <i>et seq.</i>
Plaintiff,)
)
v.)
)
U.S. DEPARTMENT OF ENERGY)
)
Defendant.)
)

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for injunctive and other appropriate relief, seeking the processing and release of agency records requested by Plaintiff from Defendant Department of Energy.

2. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 554(a)(4)(B). Jurisdiction is also proper under 28 U.S.C. §§ 1331 and 1337. Venue is proper in this Court under 5 U.S.C. § 552(a)(4)(B).

3. Plaintiff Laborers' International Union of North America Pacific Southwest Region ("LIUNA-PSW") is subdivision of the Laborers' International Union of North America

1 (“LIUNA”), a labor union organized and existing under the laws of the United States, pursuant to
2 29 U.S.C. §151 *et seq.* LIUNA-PSW serves states in the southwestern U.S, including California,
3 and the state of Hawaii. LIUNA-PSW is headquartered in Sacramento, California.

4 4. As part of LIUNA’s mission to protect workers in the Laborer classification of the
5 building trades, LIUNA-PSW routinely seeks to ensure compliance with the wage and hour laws of
6 the United States on construction projects that receive some funding from the federal government
7 and are subject to the requirements of the Davis Bacon Act, 40 U.S.C. §3141 *et seq.*, the Contract
8 Work Hours and Safety Standards Act, 40 U.S.C. §3702 *et seq.* and the Copeland Anti-Kickback
9 Act, 18 U.S.C. §874, 40 U.S.C. 3145 *et seq.*, and 41 U.S.C. §8701 *et seq.*, in addition to state
10 public contracting laws. In order to accomplish its goals, LIUNA-PSW routinely requests
11 information related to federal and state funded construction projects in order to ensure workers on
12 the project are being paid at the prevailing wage rate and are receiving the fringe benefits specified
13 in the applicable Davis Bacon wage determination.

14 5. Defendant U.S. Department of Energy (“DOE”) is a Department of the Executive
15 Branch of the United States Government and is an agency within the meaning of 5 U.S.C. § 552(f).

16 6. The Desert Sunlight Solar Generation project, located in Riverside County,
17 California (“Desert Sunlight Project”), is a construction project funded in part by Loan Guarantees
18 from the DOE and/or the United States Government, under the American Reinvestment and
19 Recovery Act of 2009 (“ARRA”). Loan guarantees under ARRA mandate compliance with the
20 requirements of the Davis-Bacon Act, 40 U.S.C. §3141 *et seq.* (“DBA”), the Contract Work Hours
21 and Safety Standards Act, 40 U.S.C. §3702 *et seq.* (“CWHSSA”), and the Copeland Anti-Kickback
22 Act, 18 U.S.C. §874, 40 U.S.C. 3145 *et seq.*, and 41 U.S.C. §8701 *et seq.* Construction on the
23 Desert Sunlight Project began in 2011 and is expected to continue through 2015.

24 7. The Secretary of Labor is authorized to require Certified Payroll Records,
25 sometimes called Payroll Reports, pursuant to 40 U.S.C. §3145(a) on federal and federally-assisted
26 projects subject to the requirements of federal public works laws. As part of the effort to assure
27 compliance with the wage requirements of the DBA and the CWHSSA, contractors performing
28 projects covered by these laws must retain Certified Payroll Records showing, among other things,

1 the rate of pay, hours worked, deductions, and net and gross wages receive in each pay period for
2 each worker covered by the relevant statutes. 29 C.F.R. §§ 3.3, 3.4.

3 8. On December 7, 2012, LIUNA-PSW submitted a written request under FOIA to
4 DOE's Loan Guarantee Program Office ("LGPO"), requesting the following documents related to
5 the Desert Sunlight Project:

6 [C]opies of certified payroll records from the above noted contractor (CLP,
7 Inc.)...from March 1, 2012 to the most current payroll record at the time this
8 request is being processed.

9 9. The FOIA request submitted by LIUNA-PSW conformed to the requirements for
10 such requests as set forth by the DOE on its website. A true and correct copy of the December 7,
11 2012 request is attached hereto as Exhibit 1 and incorporated herein by reference.

12 10. The DOE LGPO acknowledged receipt of LIUNA-PSW's request and assigned the
13 request Case Number HQ-2013-00308-F. A true and correct copy of the acknowledgement is
14 attached hereto as Exhibit 2 and is incorporated herein by reference.

15 11. On March 19, 2013, DOE released the requested documents, which were received
16 by LIUNA-PSW on March 26, 2013. In producing the documents DOE withheld extensive
17 portions of the information required to be provided on Certified Payroll Records under FOIA
18 Exemptions 4 and 6. A true and correct copy of DOE's exemption letter is attached hereto as
19 Exhibit 3 and incorporated herein by reference.

20 12. The DOE produced two types of documents in response to the FOIA request—
21 Certified Payroll Records and Deductions Forms. For all listed employees on the Certified Payroll
22 Records, DOE redacted the hours worked, net and gross pay, rate of pay, deductions, contributions
23 and payments made under FOIA Exemptions 4 and 6. On the Deduction Forms, in addition to
24 redacting employee names, which action is not challenged in this proceeding, DOE redacted the
25 amounts of various deductions, including health insurance, life insurance, vision and dental
26 insurance, disability, and child support pursuant to FOIA Exemption 6.

27 13. On April 23, 2013, LIUNA-PSW appealed the DOE's decision to withhold
28

1 information regarding the hours worked, rates of pay, net and gross wages paid, deductions, and
2 fringe benefit contributions and payments and other redactions. A true and correct copy of this
3 appeal, Case No. FIA-13-0024, and DOE's acknowledgment of receipt are attached hereto as
4 Exhibit 4 and is incorporated herein by reference. The appeal did not challenge the redaction of
5 worker names, addresses, and Social Security numbers.

6 14. On May 9, 2013, the DOE Office of Hearings and Appeals denied the appeal in part
7 and remanded in part for the DOE LGPO to explain how the release of the wage, hour and
8 deduction information was properly redacted, in light of the fact that personal identifiers were
9 redacted, and that redaction of personal identifiers was not challenged by LIUNA-PSW. A true
10 and correct copy of DOE's Decision and Order on appeal is attached hereto as Exhibit 5 and
11 incorporated herein by reference.

12 15. On August 1, 2013, an email was sent by Nina Fendel of Weinberg, Roger,
13 Rosenfeld to two staff members in the DOE LGPO who were responsible for communications
14 regarding the original FOIA request. The DOE Office of Hearings and Appeals was copied on this
15 correspondence. A true and correct copy of this e-mail communication is attached hereto as
16 Exhibit 6 and incorporated herein by reference.

17 16. On August 29, 2013, DOE LGPO re-issued their response to LIUNA's original
18 FOIA request, again citing FOIA Exemptions 4 and 6. A true and correct copy of DOE LGPO's
19 response is attached hereto as Exhibit 7 and incorporated herein by reference.

20 17. Defendant DOE has unreasonably and wrongfully withheld information on the
21 Desert Sun Project from Plaintiff through excessive redaction of the documents provided. The
22 information requested by LIUNA (which does not include personal identifiers) does not properly
23 fall within Exemptions 4 or 6. Nonetheless, DOE has refused to disclose the requested information.

24 18. Defendants' failure to provide the requested information on the Desert Sun Project
25 violates the FOIA, 5 U.S.C. § 552 *et seq.*

26 WHEREFORE, LIUNA-PSW Region prays that this Court:

27 1. Declare that Defendant's failure to provide Plaintiff with the requested wage, hour
28 and deduction data as requested violates FOIA;

2. Order Defendants to immediately disclose the requested records with all wage, hour, and deduction data unredacted and to make copies immediately available to Plaintiff;
3. Provide for expeditious proceedings in this action;
4. Retain jurisdiction over this case to ensure compliance with this Court's decree;
5. Award Plaintiff reasonable attorney fees and costs incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
6. Grant such other relief as the Court deems just and proper.

Dated: October_17, 2013

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By: /s/ Roberta D. Perkins
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